

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re: Jordan Patrick : Case No 17-57670
Sarah Patrick : Chapter 13
Debtors : Judge Hoffman

**MOTION TO DETERMINE WHETHER MORTGAGE PAYMENT CHANGE IS
REQUIRED (Doc. 45)**

Come now Debtors, Jordan and Sarah Patrick, by and through Counsel, who hereby ask this Court to Determine whether the Mortgage Payment Change filed by US Bank Trust National Association, as Trustee of the Bungalow Series III Trust (“Creditor”) is required under 3002.1(b)(2). Further, Debtors request an itemization of how their post-petition mortgage payments and pre-petition arrearage payments have been applied to their account. The Ross County Auditor’s records show that he has not received the real estate tax payments U.S. Bank claims to have made.

MEMORANDUM IN SUPPORT OF OBJECTION

On October 11, 2019, Creditor filed a Notice of Mortgage Payment Change, allegedly due to an increase to Debtor’s Real Estate Taxes. Counsel has been working with Debtor trying to figure out why there was such an increase. Upon review, unless Creditor can provide information proving otherwise, the amounts listed for Real Estate Taxes are incorrect.

Creditor has listed an annual amount for County Real Estate Tax in the amount of \$4,177.57. As evidenced from the attached Exhibit A, Debtors’ net Real Estate taxes are only \$1,307.44. Debtors received a Foreclosure Warning from the Ross County Treasurer stating their tax arrearage is \$2,716.74 (Exhibit B). This notice was received by Debtors in February 2020.

The escrow shortage prior to filing was addressed in Creditor's original claim (Exhibit C) and escrow analysis (Exhibit D). Debtors 2019 Form 1098 (Exhibit F) showed a figure of \$4,177.57, being paid to Real Estate Taxes. However, Debtors obtained information that the auditor had only received \$575.65 in 2018 and received \$0.00 in 2019. Debtors used a portion of their 2019 tax refund to pay the real estate taxes owing (Exhibit G).

Under Rule 3001(f), the payment change notice, which is the subject of the dispute, is not entitled to a presumption of validity, and any proceeding for determination under Rule 3002.1(b)(2), the creditor has the burden of proof to establish that the payment change is required, even though the motion is filed by the debtor.

WHEREFORE, the Debtor prays for an order disallowing the mortgage payment change, an itemization of how their post-petition mortgage payments and pre-petition arrearage payments have been applied to their account and ordering a new escrow analysis.

/s/Claire R. Fried
Claire R. Fried (0070650)
86 N Mulberry Street
Chillicothe, OH 45601
(740) 773-9000
740-773-9001 Fax
melinda@clairecanhelp.com

Form 20A NOTICE OF MOTION

The Debtor has filed papers with this Court requesting the relief sought in the MOTION enclosed with this NOTICE.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion/objection, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion/objection**, you must file with the court a response explaining your position by mailing

your response by regular U.S. Mail to: Clerk, U.S. Bankruptcy Court, 170 North High Street, Columbus, Ohio 43215 OR your attorney must file a response using the court's ECF System.

If you mail your written response to the Court for filing by the Clerk, you must mail it early enough so the Court will **receive** it on or before the date stated above.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to:

Claire R. Fried
86 N Mulberry Street
Chillicothe, OH 45601

Faye D English
One Columbus
10 West Broad Street, Suite 900
Columbus, Ohio 43215

U.S. Trustee
170 North High Street, Suite 200
Columbus, Ohio 43215

Jordan and Sarah Patrick
27 West Second Street
Kingston, Ohio 45644

If you or your attorney do not take the steps, the court may decide that you do not oppose the relief sought in the motion/objection and may enter an order granting that relief.

CERTIFICATE OF SERVICE

The undersigned hereby CERTIFIES that a true and correct copy of the Objection to Proof of Claim was served by Electronic Notification upon:

- * Faye D English, Chapter 13 Trustee
- * US Trustee
- * Richard John LaCivita, Attorney for Nationstar

Also served,

Jordan and Sarah Patrick
27 West Second Street
Kingston, Ohio 45644

Nationstar Mortgage LI

350 Highland Dr
Lewisville TX 75067

Nationstar Mortgage LLC d/b/a Mr. Cooper
Attn: Bankruptcy Dept.
PO Box 619096
Dallas, TX 75261

Michelle R Ghidotti-Gonsalves
Authorized Agent
1920 Old Tustin Avenue
Santa Ana, CA 92705

U.S. Bank Trust National Association
c/o BSI Financial Services
1425 Greenway Dr., Ste. 400
Irving, TX 75038

by regular U.S. Mail, postage prepaid, this 28th day of July 2020

/s/Claire R. Fried
Claire R. Fried
86 N. Mulberry Street
Chillicothe, OH 45601